

## **FUNDING AGREEMENT**

THIS AGREEMENT is between the City of Cincinnati, an Ohio municipal corporation, (the "City"), 801 Plum Street, Cincinnati, Ohio 45202, and the North Fairmount Community Center, a Ohio non-profit corporation ( the "Developer"), 2569 St. Leo Place, Cincinnati, Ohio 45225.

### **Background:**

WHEREAS, the City is responsible for the receipt and disbursement of Community Development Block Grant ("CDBG") monies made available pursuant to the Housing and Community Development Act of 1974 as amended, through the U.S. Department of Housing and Urban Development, ("HUD"); and

WHEREAS, the Developer has committed to construct a 22-car public parking lot adjacent to existing and planned retail in North Fairmount; and

WHEREAS, the development and renovation of the Property by the Developer is eligible for CDBG assistance in that it is an activity which will provide an area benefit to low and moderate income persons within the meaning of 24 C.F.R. 570.208(a); and

WHEREAS, execution of this Agreement on behalf of the City has been authorized by Ordinance No. \_\_\_\_ -2001;

NOW, THEREFORE, the parties agree as follows:

SEC. 101. AMOUNT OF LOAN - Subject to the terms and conditions of this Agreement the City will lend to the Developer the sum of \$60,000.00 (the "Funds").

SEC. 102. THE PROPERTY - The property which is subject to this Agreement is identified by parcel I.D. Nos. 202-40-(287-295) and 202-33-(72-74), (hereinafter referred to as the "Property"). The Property is further described in Exhibit A, entitled "Legal Description of Property," attached.

SEC. 103. THE PROJECT - Subject to the terms of this Agreement, the Developer agrees to perform work specified in the "Statement of Work and Budget" attached as Exhibit B (the "Project").

SEC. 104. TIME FOR COMPLETION OF THE PROJECT - The Project shall be completed within the time set forth in the "Statement of Work and Budget".

SEC. 105. EXPIRATION OF CITY OBLIGATION - All disbursements must be properly vouchered within 30 days after the expiration of the time period described in SEC. 104, above. The City shall have no obligation as to vouchers submitted thereafter.

SEC. 106. TERMS OF THE LOAN - This loan shall be made subject to the following terms:

(a) Term - The term of this loan shall be three years from the date of the Promissory Note. Interest shall accrue at the rate of eight percent per year, compounded annually. Interest of the principal amount shall commence on the date of the Promissory Note. Payment of principal and interest is due in one payment three years from the date of the Promissory Note, except as otherwise provided herein. Payment is to be made at Two Centennial Plaza, 805 Central Avenue, Suite 710, Cincinnati, Ohio, 45202, or such other place as the Note Holder may designate.

(b) Repayment - If the Property has not been developed according to the terms of this Agreement within by January 31, 2004, or if the Developer is otherwise in default of this Agreement, the entire amount of this loan immediately shall become due together with interest at eight percent per year, compounded annually.

(c) Forgiveness - The amount of this loan, together with all accrued interest, shall be forgiven and this loan shall be converted into a grant, if by January 31, 2004, the Property has been developed according to the terms of this Agreement and if the Developer is not in default of the terms hereof, and the City shall return its Note to Developer and cause the Mortgage to be canceled.

SEC. 107. MINIMUM INVESTMENT - The minimum amount of non-public money to be spent in the development of the Property by the Developer is \$690,000.00.

SEC. 108. SECURITY - Prior to the disbursement of any of the Funds, the Developer agrees to execute and deliver to the City in a form acceptable to the City, a promissory note for the amount of this loan and a mortgage deed to the Property, as security for the note and this loan.

SEC. 109. NOTICES - A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, return receipt requested, and

- (a) In the case of a notice or communication to North Fairmount Community Center, if the same is addressed as follows:

North Fairmount Community Center  
2569 St. Leo Place  
Cincinnati, Ohio 45225

- (b) In the case of a notice or communication to the City, if the same is addressed as follows:

City Manager  
City of Cincinnati  
801 Plum Street  
Cincinnati, Ohio 45202

or is addressed in such other way in respect to either party as that party may, from time-to-time, designate in writing dispatched as provided in this Section.

SEC. 110. Equal Employment Opportunity - This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. (Ordained by Ord. No. 331-1999, eff. Aug. 4, 1999). During the performance of this Agreement, the Developer agrees as follows:

- (a) The Developer shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, or national origin. As used here, the words 'shall not discriminate' means and includes without limitation the following:

(1) Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

(2) The Developer agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

(b) The Developer shall, in all solicitations or advertisements for employees, placed by or on behalf of the Developer, state that qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

(c) The Developer shall furnish all information and reports required by the contract compliance officer pursuant to this chapter, and shall permit access to the books, records, and accounts of the Developer during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.

(d) The Developer shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the city, the city may enter into such litigation as is necessary to protect the interest of the city and to effectuate the Equal Employment Opportunity Program of the city; and, in the case of contracts receiving federal assistance, the Developer or the city may request the United States to enter into such litigation to protect the interests of the United States.

(e) The Developer shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed shall contain information as to employment practices, policies, programs, and statistics of the Developer.

(f) The Developer shall include the provisions of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

(g) A finding, as hereinafter provided, that a refusal by the Developer to comply with any portion of this Equal Employment Opportunity Program, may subject the offending party to any or all of the following penalties:

(1) Refusal of all future bids or proposals for any contract with the city or its boards or commissions until such time as the Developer demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this chapter;

(2) Cancellation of the contract;

(3) In a case in which there is substantial or a material violation of the compliance procedures herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

SEC. 111. Small Business Enterprise Program - The policy of the City is that a fair share of contracts be awarded to small, minority and women's business firms. Accordingly, the Developer must use best efforts and take affirmative steps to assure that Small Business Enterprises ("SBE's") are utilized as sources of supplies, equipment, construction and services— with the goal of voluntarily meeting -30% SBE combined participation for construction, supplies, services, and professional services. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with Cincinnati Municipal Code Chapter 323 (Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999). (A list of SBE's may be obtained from the Office of Contract Compliance.) The Developer may refer interested firms to the Office of contract Compliance for review and possible certification as an SBE. The Developer agrees to take at least the following affirmative steps:

- Including qualified SBE's on solicitation lists.
- Assuring that SBE's are solicited whenever they are potential sources. The Developer must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBE's to provide services, to supply materials or to bid on construction contracts for the Improvements.
- When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- When needs permit, establishing delivery schedules which will encourage participation by SBE's.

If any subcontracts are to be let, the Developer agrees to require the prime contractor to take the above affirmative steps.

The Developer must provide to the City, prior to commencement of construction of the Improvements, a listing of all contractors and subcontractors for the construction of the Improvements including information as to Contractors, dollar amount of the contract or sub-contract, and other information that may be deemed necessary by the City Manager. The report must be updated periodically.

The Developer must periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting notarized affidavits executed in a form acceptable to the City, upon the written request of the City. The City may review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the Developer pursuant to Section 2921.12, Ohio Revised Code.

Failure of the Developer or its contractors and subcontractors to take the affirmative steps specified above, or to provide fair and equal opportunity to SBE's, or to provide technical assistance to SBE's as

may be necessary to reach the minimum percentage goals for SBE participation as set forth in Chapter 323, may be construed by the City as failure of the Developer to use best efforts, and in addition to other remedies under this Agreement may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section.

IN WITNESS WHEREOF, the City of Cincinnati has executed this Agreement on \_\_\_\_\_, 2001, and the North Fairmount Community Center has executed this Agreement on \_\_\_\_\_, 2001.

RECOMMENDED BY:

\_\_\_\_\_  
Antoinette A. Selvey-Maddox  
Acting Director, Economic Development

**City of Cincinnati**

APPROVED:

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Kathi A. Ranford  
Contract Compliance Officer

**North Fairmount Community Center**

APPROVED AS TO FORM:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Ely M. T. Ryder  
Assistant City Solicitor

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